

**April 20, 2006**

**DECISION AND ORDER**

**OF THE DEPARTMENT OF ENERGY**

**Appeal**

Name of Petitioner: Arlie Bryan Siebert

Date of Filing: March 22, 2006

Case Number: TFA-0157

On March 22, 2006, Arlie Bryan Siebert filed an appeal from a determination issued to him on November 21, 2005, by the Department of Energy's (DOE) Freedom of Information and Privacy Act Group (FOI). In the appeal, Mr. Siebert challenged the disposition of his request for a waiver of fees incurred, the failure to provide him with an itemized accounting of fees, and the timeliness of the DOE's response in connection with a request he submitted under the Freedom of Information Act (FOIA), 5 U.S.C. § 552, as implemented by the DOE in 10 C.F.R. Part 1004. This appeal, if granted, would overturn FOI's determination and waive in full the fees associated with Mr. Siebert's request and require that FOI provide him with an itemized accounting of fees incurred in connection with the processing of his FOIA request.

**I. Background**

Mr. Siebert filed a request for information regarding DOE employees who attained undergraduate and graduate degrees from unaccredited institutions. Letter from Abel Lopez, FOI, to Mr. Siebert (November 21, 2005) (Determination Letter). Mr. Siebert also requested a waiver of the fees associated with processing the request but stated that, in the alternative, he would be willing to pay up to one hundred dollars in fees. Letter from Mr. Siebert to Abel Lopez (May 7, 2004).

FOI informed Mr. Siebert that it required additional information to consider his request for a fee waiver. Letter from Abel Lopez to Mr. Siebert (July 16, 2004). FOI also stated that if it did not receive the additional information by a specified date, it would consider the request for a fee waiver withdrawn and would process the request in accordance with Mr. Siebert's agreement to pay up to one hundred dollars. *Id.* Mr. Siebert did not respond to FOI's request by the specified date. Consequently, FOI considered the request for a fee waiver withdrawn and processed the request accordingly. Determination Letter. FOI informed Mr. Siebert that, while the fees incurred in processing the request exceeded the one hundred dollars Mr. Siebert agreed to pay, it

inadvertently processed the request without asking Mr. Siebert to pay the additional amount and, therefore, would only bill him the agreed upon one hundred dollars. *Id.*

In his appeal, Mr. Siebert challenges FOI's disposition of his fee waiver request. Letter from Mr. Siebert to OHA (March 12, 2006) (Appeal Letter). He also maintains that he is entitled to an itemized accounting of the fees incurred in processing his FOIA request. *Id.* Finally, he maintains that the DOE has not responded to his FOIA request in a timely fashion. *Id.*

## **II. Analysis**

### Fee Waiver

The FOIA generally requires that requesters pay fees associated with processing their requests. 5 U.S.C. § 552(a)(4)(A)(i); *see also* 10 C.F.R. § 1004.9(a). However, the FOIA provides for a reduction or waiver of fees *only if a requester satisfies his burden* of showing that disclosure of the information (1) is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government; and, (2) is not primarily in the commercial interest of the requester. 5 U.S.C. § 552(a)(4)(A)(iii); *see also* 10 C.F.R. § 1004.9(a)(8) (emphasis added).

In this case, FOI requested additional information from Mr. Siebert in order to determine whether he satisfied his burden under the FOIA. FOI informed Mr. Siebert that a failure to provide the requested additional information would be considered a withdrawal of the fee waiver request. According to FOI, it informed Mr. Siebert of this requirement via certified mail and received a signed return receipt for the letter. *See* Memorandum of Telephone Conversation between Diane DeMoura, OHA, and Joan Ogbazghi, FOI (March 29, 2006); *see also* Copy of Return Receipt (July 21, 2004). Mr. Siebert himself does not argue that he did not receive the letter; rather, he concedes that, although he did not remember the letter, he "likely did receive it." Appeal Letter. Absent a showing by Mr. Siebert that he did not have notice of the requirement that he submit additional information by a specified date, we see no reason to find that FOI erred in considering Mr. Siebert's request for a fee waiver withdrawn. Given the withdrawal of the request, FOI did not make a determination on Mr. Siebert's fee waiver request. Consequently, the issue of Mr. Siebert's eligibility for a fee waiver is not ripe for our review.

### Bill for Fees Incurred

Mr. Siebert also contends that he is entitled to an itemized statement of the fees associated with the processing of his FOIA request. Mr. Siebert was provided with a bill stating only that he owed "[one hundred dollars] for search time associated with processing [his] FOIA request." *See* Billing Request signed by Joan Ogbazghi (February 16, 2006).

We agree with Mr. Siebert that he is entitled to an itemized bill explaining the fees incurred in processing his FOIA request and the portion of those fees for which he was actually billed. Accordingly, we will remand this portion of Mr. Siebert's appeal to FOI with instructions that FOI provide Mr. Siebert with an itemized accounting of the fees incurred in his case.

## Timeliness

Mr. Siebert also challenges the timeliness of DOE's response to his FOIA request. However, this office does not have jurisdiction to consider appeals concerning the timeliness of the agency's response to FOIA requests. 10 C.F.R. § 1004.8; *see also R.E.V. Engineering Services*, 28 DOE ¶ 80,136 (2001). Accordingly, we will dismiss the portion of Mr. Siebert's appeal concerning the timeliness of DOE's response. Under the FOIA, Mr. Siebert may seek the

It Is Therefore Ordered That:

- (1) The appeal filed by Arlie Bryan Siebert on March 22, 2006, Case No. TFA-0157, is granted in part and dismissed in part as set forth in paragraphs (2) and (3) below, and in all other respects denied.
- (2) The portion of the appeal concerning the bill for fees incurred in processing Mr. Siebert's FOIA request is hereby remanded for further processing in accordance with the instructions set forth in this Decision and Order.
- (3) The portion of the appeal concerning the timeliness of DOE's response to Mr. Siebert's FOIA request is hereby dismissed.
- (4) This is a final order of the Department of Energy from which any aggrieved party may seek judicial review pursuant to 5 U.S.C. § 552(a)(4)(B). Judicial review may be sought in the district in which the requester resides or has a principal place of business, or in which the agency records are situated, or in the District of Columbia.

George B. Breznay  
Director  
Office of Hearings and Appeals

Date: April 20, 2006